

Part 1

Division Administration

58-1-101 Short title.

This chapter is known as the "Division of Occupational and Professional Licensing Act."

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-102 Definitions.

For purposes of this title:

- (1) "Ablative procedure" is as defined in Section 58-67-102.
- (2) "Cosmetic medical procedure":
 - (a) is as defined in Section 58-67-102; and
 - (b) except for Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act, does not apply to the scope of practice of an individual licensed under this title if the individual's scope of practice includes the authority to operate or perform surgical procedures.
- (3) "Department" means the Department of Commerce.
- (4) "Director" means the director of the Division of Occupational and Professional Licensing.
- (5) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.
- (6) "Executive director" means the executive director of the Department of Commerce.
- (7) "Licensee" includes any holder of a license, certificate, registration, permit, student card, or apprentice card authorized under this title.
- (8)
 - (a)
 - (i) "Nonablative procedure" means a procedure that is expected or intended to alter living tissue, but not intended or expected to excise, vaporize, disintegrate, or remove living tissue.
 - (ii) Notwithstanding Subsection (8)(a)(i), nonablative procedure includes hair removal.
 - (b) "Nonablative procedure" does not include:
 - (i) a superficial procedure;
 - (ii) the application of permanent make-up; or
 - (iii) the use of photo therapy and lasers for neuromusculoskeletal treatments that are performed by an individual licensed under this title who is acting within their scope of practice.
- (9) "Pain clinic" means:
 - (a) a clinic that advertises its primary purpose is the treatment of chronic pain; or
 - (b) a clinic in which greater than 50% of the clinic's annual patient population receive treatment primarily for non-terminal chronic pain using Schedule II-III controlled substances.
- (10) "Superficial procedure" means a procedure that is expected or intended to temporarily alter living skin tissue and may excise or remove stratum corneum but have no appreciable risk of damage to any tissue below the stratum corneum.
- (11) "Unlawful conduct" has the meaning given in Subsection 58-1-501(1).
- (12) "Unprofessional conduct" has the meaning given in Subsection 58-1-501(2).

Amended by Chapter 127, 2016 General Session

58-1-103 Division created to administer licensing laws.

There is created within the Department of Commerce the Division of Occupational and Professional Licensing. The division shall administer and enforce all licensing laws of Title 58, Occupations and Professions.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-104 Director of division -- Appointment -- Duties.

- (1) The division shall be under the supervision, direction, and control of a director. The director shall be appointed by the executive director with the approval of the governor. The director shall hold office at the pleasure of the governor.
- (2) The director shall perform all duties, functions, and responsibilities assigned to the division by law or rule and, where provided, with the collaboration and assistance of the boards established under this title.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-105 Employment of staff.

The director, with the approval of the executive director, may employ necessary staff, including specialists and professionals, to assist him in performing the duties, functions, and responsibilities of the division.

Renumbered and Amended by Chapter 297, 1993 General Session

58-1-106 Division -- Duties, functions, and responsibilities.

- (1) The duties, functions, and responsibilities of the division include the following:
 - (a) prescribing, adopting, and enforcing rules to administer this title;
 - (b) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;
 - (c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by the director or by the director's designee;
 - (d) taking administrative and judicial action against persons in violation of the laws and rules administered and enforced by the division, including the issuance of cease and desist orders;
 - (e) seeking injunctions and temporary restraining orders to restrain unauthorized activity;
 - (f) complying with Title 52, Chapter 4, Open and Public Meetings Act ;
 - (g) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or otherwise acting upon any license;
 - (h) preparing and submitting to the governor and the Legislature an annual report of the division's operations, activities, and goals;
 - (i) preparing and submitting to the executive director a budget of the expenses for the division;
 - (j) establishing the time and place for the administration of examinations; and
 - (k) preparing lists of licensees and making these lists available to the public at cost upon request unless otherwise prohibited by state or federal law.
- (2) The division may not include home telephone numbers or home addresses of licensees on the lists prepared under Subsection (1)(k), except as otherwise provided by rules of the division made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (3)
- (a) The division may provide the home address or home telephone number of a licensee on a list prepared under Subsection (1) upon the request of an individual who provides proper identification and the reason for the request, in writing, to the division.
 - (b) A request under Subsection (3)(a) is limited to providing information on only one licensee per request.
 - (c) The division shall provide, by rule, what constitutes proper identification under Subsection (3)(a).

Amended by Chapter 238, 2016 General Session

58-1-107 Applicability -- Relationship to specific chapters under title.

The provisions of this chapter uniformly apply to the administration and enforcement of this title. However, unless expressly prohibited in this chapter, any provision of this chapter may be supplemented or altered by specific chapters of this title.

Enacted by Chapter 297, 1993 General Session

58-1-108 Adjudicative proceedings.

- (1) The division and all boards created under the authority of this title shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63G, Chapter 4, Administrative Procedures Act, in all of their adjudicative proceedings as defined by Subsection 63G-4-103(1).
- (2) Before proceeding under Section 63G-4-502, the division shall review the proposed action with a committee of no less than three licensees appointed by the chairman of the licensing board created under this title for the profession of the person against whom the action is proposed.
- (3) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, a warning or final disposition letter which does not constitute disciplinary action against the addressee, issued in response to a complaint of unprofessional or unlawful conduct under this title, does not constitute an adjudicative proceeding.

Amended by Chapter 382, 2008 General Session

58-1-109 Presiding officers -- Content of orders -- Recommended orders -- Final orders -- Appeal of orders.

- (1) Unless otherwise specified by statute or rule, the presiding officer for adjudicative proceedings before the division shall be the director. However, pursuant to Title 63G, Chapter 4, Administrative Procedures Act, the director may designate in writing an individual or body of individuals to act as presiding officer to conduct or to assist the director in conducting any part or all of an adjudicative proceeding.
- (2) Unless otherwise specified by the director, an administrative law judge shall be designated as the presiding officer to conduct formal adjudicative proceedings in accordance with Subsection 63G-4-102(4), Sections 63G-4-204 through 63G-4-207, and 63G-4-209.
- (3) Unless otherwise specified by the director, the licensing board of the occupation or profession that is the subject of the proceedings shall be designated as the presiding officer to serve as fact finder at the evidentiary hearing in a formal adjudicative proceeding.
- (4) At the close of an evidentiary hearing in an adjudicative proceeding, unless otherwise specified by the director, the presiding officer who served as the fact finder at the hearing shall issue a

recommended order based upon the record developed at the hearing determining all issues pending before the division.

- (5)
- (a) The director shall issue a final order affirming the recommended order or modifying or rejecting all or any part of the recommended order and entering new findings of fact, conclusions of law, statement of reasons, and order based upon the director's personal attendance at the hearing or a review of the record developed at the hearing. Before modifying or rejecting a recommended order, the director shall consult with the presiding officer who issued the recommended order.
 - (b) If the director issues a final order modifying or rejecting a recommended order, the licensing board of the occupation or profession that is the subject of the proceeding may, by a two-thirds majority vote of all board members, petition the executive director or designee within the department to review the director's final order. The executive director's decision shall become the final order of the division. This subsection does not limit the right of the parties to appeal the director's final order by filing a request for agency review under Subsection (8).
- (6) If the director is unable for any reason to rule upon a recommended order of a presiding officer, the director may designate another person within the division to issue a final order.
- (7) If the director or the director's designee does not initiate additional fact finding or issue a final order within 20 calendar days after the date of the recommended order of the presiding officer, the recommended order becomes the final order of the director or the director's designee.
- (8) The final order of the director may be appealed by filing a request for agency review with the executive director or the executive director's designee within the department.
- (9) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

Amended by Chapter 238, 2016 General Session

58-1-110 Legislative review in Title 58, Occupations and Professions.

Legislation proposing the licensing or regulation of an occupation or profession under Title 58, Occupations and Professions, that is not currently subject to licensing or regulation under Title 58, Occupations and Professions:

- (1) may not be enacted by the Legislature unless:
 - (a) a proposal to license or regulate the occupation or profession has been reviewed by the Occupational and Professional Licensure Review Committee as described in Title 36, Chapter 23, Occupational and Professional Licensure Review Committee Act; or
 - (b) the proposed legislation contains a provision that expressly exempts the legislation from the review requirement of Subsection (1)(a);
- (2) is subject to a reauthorization schedule as described in Title 63I, Chapter 1, Legislative Oversight and Sunset Act; and
- (3) shall include a repeal date in Section 63I-1-258 that is no later than 10 years after the effective date of the legislation.

Enacted by Chapter 323, 2013 General Session

58-1-111 Tax credit certificate -- Psychiatrists and psychiatric mental health nurse practitioners -- Underserved populations.

- (1) As used in this section:

- (a) "Average of 30 hours or more per week" means that the quotient calculated when dividing the claimant's total hours providing licensed services in the state during the taxable year by the number of weeks in which the claimant is licensed in the state during the taxable year is greater than or equal to 30.
 - (b) "Licensed services" means the provision of behavioral health treatment in the state and within the scope of practice of a psychiatrist, a psychiatric mental health nurse practitioner, or a volunteer health practitioner.
 - (c) "Psychiatric mental health nurse practitioner" means an individual who:
 - (i) is licensed under Chapter 31b, Nurse Practice Act, for the practice of advanced practice registered nursing as that term is defined in Section 58-31b-102; and
 - (ii) holds a certification recognized by the American Nurses Credentialing Center of the American Association of Colleges of Nursing as a psychiatric mental health nurse practitioner.
 - (d) "Psychiatrist" means an individual who:
 - (i) is licensed as a physician under:
 - (A) Chapter 67, Utah Medical Practice Act;
 - (B) Chapter 67b, Interstate Medical Licensure Compact; or
 - (C) Chapter 68, Utah Osteopathic Medical Practice Act; and
 - (ii) is board eligible for a psychiatry specialization recognized by the American Board of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic Specialists.
 - (e) "Underserved population" means:
 - (i) an individual located in a county of the third, fourth, fifth, or sixth class, as designated in Section 17-50-501; or
 - (ii) a Native American Indian.
 - (f) "Volunteer retired psychiatrist" means an individual:
 - (i) described in Subsection (1)(d) who, during the calendar year, did not receive payment for providing licensed services; or
 - (ii)
 - (A) licensed under Chapter 81, Retired Volunteer Health Practitioner Act; and
 - (B) previously or currently board certified in psychiatry.
- (2)
- (a) An individual who seeks to obtain a state income tax credit under Subsections 59-10-1111(2) through (4) shall file an application with the division with respect to each taxable year in which the individual seeks a state income tax credit.
 - (b) An individual may qualify for a tax credit certificate under this section for no more than 10 taxable years for each tax credit.
- (3) The application for a tax credit certificate under Subsection 59-10-1111(2) shall require the individual to provide the following to the division:
- (a) the date on which the individual obtained a license and the specialization described in Subsection (1)(c)(ii) or (d)(ii);
 - (b)
 - (i) an attestation that the individual was licensed on or after January 1, 2017, to provide licensed services; or
 - (ii) if the individual was licensed to provide licensed services prior to January 1, 2017, an attestation:
 - (A) that the individual did not provide licensed services for the two calendar years before the date the individual initially applied for the income tax credit under this subsection; and
 - (B) the date on which the individual resumed providing licensed services in the state; and

- (c) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) An application for a tax credit certificate under Subsection 59-10-1111(3) shall require the individual to attest to the division:
 - (a) that the individual averaged 30 or more hours per week during the taxable year providing licensed services;
 - (b) that the individual devoted 25% or more of the individual's total hours of licensed services in the taxable year to an underserved population;
 - (c) the type of underserved population for which the individual provided services during the taxable year; and
 - (d) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5) An application for a tax credit certificate under Subsection 59-10-1111(4) shall require the individual to attest to the division:
 - (a) whether the individual is licensed under Subsection (1)(f)(i) or (ii);
 - (b) that the individual did not receive payment during the calendar year for providing licensed services;
 - (c) that during the calendar year, the individual provided at least 300 hours of licensed services to an underserved population, the homeless population, or veterans without receiving payment for providing the licensed services;
 - (d) a description of the type of population described in Subsection (5)(c) for which the individual provided licensed services; and
 - (e) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (6)
 - (a) The division shall issue a tax credit certificate in accordance with this subsection.
 - (b) The tax credit certificate may state that an individual is entitled to:
 - (i) a tax credit under Subsection 59-10-1111(2) if the individual meets the requirements of Subsection (3);
 - (ii) a tax credit under Subsection 59-10-1111(3) if the individual meets the requirements of Subsection (4);
 - (iii) a tax credit under Subsection 59-10-1111(4) if the individual meets the requirements of Subsection (5); or
 - (iv) a tax credit under Subsections 59-10-1111(2) and (3) if the individual meets the requirements of Subsections (3) and (4).
- (7)
 - (a) The division may issue a tax credit certificate to an individual under Subsection 59-10-1111(2) for no more than 10 taxable years after the date on which the individual resumed services under Subsection (3)(b)(ii).
 - (b) The division may issue a tax credit certificate to an individual under Subsections 59-10-1111(3) and (4) for no more than 10 taxable years.
- (8) The division shall provide a copy of a tax credit certificate issued under this section to the individual and the State Tax Commission.

Enacted by Chapter 407, 2016 General Session